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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/630,896	08/02/2000	Timothy J. Mousley	PHB 34 , 390	7981

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EXAMINER
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GREY, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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2474

MAIL DATE	DELIVERY MODE
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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/630,896	<b>Applicant(s)</b> MOULSLEY ET AL.	
	<b>Examiner</b> CHRISTOPHER P. GREY	<b>Art Unit</b> 2474	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15, 18, 19, 30, 33-36 and 41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 18, 19, 30, 33-36 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/10 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 15, 18, 19, 30, 33-36 and 41 have been considered but are moot in view of the new ground(s) of rejection.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 15, 18, 19, 30, 33-36 and 41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6,708,037 in view of Han (US 6,973,062) and Cao et al. (US 6,850,504).

**Regarding claim 15**, U.S. Patent No. 6,708,037 teaches a radio communication system, comprising: a primary station operable to transmit a random access channel status message (**Claim 1, primary station signaling availability**),

a plurality of secondary stations operable to receive the random access channel status message (**Claim 1, notice secondary stations**),

U.S. Patent No. 6,708,037 does not specifically disclose the status message including a bit rate and that includes an indicated highest available data rate on each random access channel of a plurality of random access channels; and wherein each secondary station is further operable to determine which random access channel to request based on the random access channel status message: and wherein the bit rate of the random access channel status message is variable in accordance with channel capacity in order to enable each secondary station to determine which random access channel to request.

Han discloses the status message including a bit rate and that includes an indicated highest available data rate on each random access channel of a plurality of random access channels **(Column 4 lines 1-10, notice availability of Walsh code classes is indicated by bits in figure 3, where each class represents a transmission rate according to Column 3 lines 60-65, highest class would correspond to MAX bit rate)**; and wherein each secondary station is further operable to determine which random access channel to request based on the random access channel status message **(Column 5 lines 40-47, where the mobile terminals implement call access request based on the state of Walsh codes received)**; and wherein the bit rate of the random access channel status message is variable in accordance with channel capacity **(Column 4 lines 30-37, notice multi-transmission rate)** in order to enable each secondary station to determine which random access channel to request **(Column 5 lines 40-47, notice mobile makes access request depending on availability of Walsh codes)**.

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed to modify the radio communication system of U.S. Patent No. 6,708,037, as taught by Han, since stated in Column 2 lines 44-48 of Han, that such a modification will decrease overhead for service negotiation, thereby decreasing interference due to unnecessary communication in the radio channel.

The combined teachings of U.S. Patent No. 6,708,037 and Han do not specifically disclose transmitting the status message only when requested.

Cao discloses transmitting the status message only when requested (**Column 4 lines 1-37 shows RACH request and in response a negotiation from the controller in the BS of figure 2**).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed to modify the combined teachings of U.S. Patent No. 6,708,037 and Han, as taught by Cao, since stated in Column 1 lines 1-67 of Cao, that such a modification enhances the assignment of shared resources based on the QOS required by each end user and the efficiency use of bandwidth in a communication system.

**Regarding claim 18,** The combined teachings of U.S. Patent No. 6,708,037, Han and Cao teach wherein the random access channel status message is transmitted by said primary station as a part of a paging indicator channel (**Han: Column 4 lines 44-46, notice paging channel**).

**Regarding claim 19,** The combined teachings of U.S. Patent No. 6,708,037, Han and Cao teach wherein the random access channel status message is transmitted by said

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primary station as a part of an acquisition indicator channel (**Han: Column 4 lines 44-46, notice BCCH channel**).

**Regarding claim 36,** The combined teachings of U.S. Patent No. 6,708,037, Han and Cao teach wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future demand for capacity (**Han: Column 4 lines 1-67, notice that the highest class codes may not be available, thus are not indicated as available in the message sent in figure 3**).

**Regarding claims 30, 33, 34, 35 and 41,** these claims recite similar limitations, so have therefore been addressed similarly to those claims rejected above (i.e. U.S. Patent No. 6,708,037 shows method claims in claim 7).

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 15, 18, 19, 30, 33-36 and 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitations “

**transmit access channel status message only when requested” and “the status message including a bit rate” and “wherein the bit rate of the random access channel status message is variable in accordance with channel capacity in order to enable each secondary station to determine which random access channel to request”** of claims 15 and 30 fail to comply with the written description requirement.

Page 8 of the specification indicates that the AV message equivalent to a status message is sent regularly, and does not show that it is dependent on a request.

Furthermore, page 8 line 31-page 9 line 4 teaches that the BS assigns bit rates only when they are requested, however assigning bit rates is different than sending a status message, and does not support the amended claimed limitation.

The applicant remarks (page 7) indicates that support for the applicant's amendments can be found on page 8 lines 16-21 of the present disclosure. The cited portion does not indicate a bit rate being included in the AV/status message as claimed via the amendments. Also, the cited portion does not discuss a capacity or varying bit rate as claimed (see amendments). Based on the examiner's findings, the amendments fail to comply with the written description requirement.

The examiner makes note of claim 30, as the status message includes an indication of **the availability** of the highest data rate, and not an indicated highest data rate as claimed. There is no support in the specification for the highest data rate being indicated in the message, only the availability of such a data rate (see spec page 7). The examiner suggests including claim 35 into claim 30 and 15 to rectify this matter.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 15, 18, 19, 30, 33-36 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Han (US 6,973,062) in view of Cao et al. (US 6,850,504).

**Regarding claim 15, 30,** Han discloses a radio communication system, comprising: a primary station message **(See figure 1 and 3, BS= primary)** operable to transmit a random access channel status message **(Figure 2, shows status message indicating availability)**, the status message including a bit rate and that includes an indicated highest available data rate on each random access channel of a plurality of random access channels **(Column 4 lines 1-10, notice availability of Walsh code classes is indicated by bits in figure 3, where each class represents a transmission rate according to Column 3 lines 60-65, highest class would correspond to MAX bit rate)**;

a plurality of secondary stations operable to receive the random access channel status message **(Column 3 lines 5-15, BS broadcast call access information to terminals)**;

and wherein each secondary station is further operable to determine which random access channel to request based on the random access channel status

message (**Column 5 lines 40-47, where the mobile terminals implement call access request based on the state of Walsh codes received**):

and wherein the bit rate of the random access channel status message is variable in accordance with channel capacity (**Column 4 lines 30-37, notice multi-transmission rate**) in order to enable each secondary station to determine which random access channel to request (**Column 5 lines 40-47, notice mobile makes access request depending on availability of Walsh codes**).

Han does not specifically disclose transmitting the status message only when requested.

Cao discloses transmitting the status message only when requested (**Column 4 lines 1-37 shows RACH request and in response a negotiation from the controller in the BS of figure 2**).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed to modify the teachings of Han, as taught by Cao, since stated in Column 1 lines 1-67 of Cao, that such a modification enhances the assignment of shared resources based on the QOS required by each end user and the efficiency use of bandwidth in a communication system.

**Regarding claim 18, 33,** The combined teachings of Han and Cao teach wherein the random access channel status message is transmitted by said primary station as a part of a paging indicator channel (**Han: Column 4 lines 44-46, notice paging channel**).

**Regarding claim 19, 34,** The combined teachings of Han and Cao teach wherein the random access channel status message is transmitted by said primary station as a part

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of an acquisition indicator channel (**Han: Column 4 lines 44-46, notice BCCH channel**).

**Regarding claim 35,** The combined teachings of Han and Cao teach wherein the indicated highest available data rate serves to identify whether the corresponding random access channel is available, and identifies a highest available data rate for available channels of the plurality of random access channels (**Han: Column 4 lines 1-10, notice availability of Walsh code classes is indicated by bits in figure 3, where each class represents a transmission rate according to Column 3 lines 60-65, highest class would correspond to MAX bit rate**).

**Regarding claim 36, 41,** The combined teachings of Han and Cao teach wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future demand for capacity (**Han: Column 4 lines 1-67, notice that the highest class codes may not be available, thus are not indicated as available in the message sent in figure 3**).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER P. GREY whose telephone number is (571)272-3160. The examiner can normally be reached on 10AM-7:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Moe Aung can be reached on (571)272-7314. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher P Grey/  
Examiner, Art Unit 2474